IN THE HIGH COURT OF BOMBAY AT GOA
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SECOND APPEAL NO. 30 OF 2001

1. Shri Dattaram Keshav
   Gauncar,

2. Smt. Premabai Dattaram
   Gauncar, wife of
   appellant no.1,

3. Shri Laxman Keshav
   Gauncar,

4. Shri Gopal Keshav
   Gauncar,

5. Smt. Pyari Gopal
   Gauncar,
   wife of appellant
   no.4,

6. Smt. Xantabai Laximan
   Gauncar, wife of
   appellant no.3,

7. Shri Shantaram Keshav
   Gauncar,

8. Smt. Seguni Shantaram
   Gauncar, wife of
   appellant no.7 and

9. Shri Suresh Keshav Gauncar,
   all married, all agricul-
   turists, r/o Manaswado,
   Sirigao. ...Appellants.

Versus

1. Shri Paris Mukund Gauncar,

2. Smt. Manquem Deu Bamaikar,

3. Shri Deu Bamaikar (expired):
   all three r/o Sirigao

   (a) Manohar Deu Bhamoicar
       and his wife Sumitra
       Bamaicar of Sirigao,

   (b) Desharata Deu Bamoicar
       and his wife Shushitra
       Dasharata Bamoicar,

   (c) Pandurang Deu Bamoicar,

bachelor, major of age,
of Sirigao,

(d) Krishna Deu Bamoicar
and his wife Rupali
Krishna Bamoicar, r/o
Sirigao,

(e) Anand Deu Bamoicar,
bachelor, major, r/o
Sirigao (this name has been
given in duplicate, by
mistake),

(f) Shusma Hanumanth Godekar,
and her husband Hanumanth
Godekar, r/o Amuddar,
Dongrim, Tiswadi,

4. Smt. Anussia Marto Cundoikar,

5. Shri Marto Cundoikar, both r/o
Kundoi, Ponda,

6. Shri Putu Narahari Gauncar,

7. Shri Chandra Putu Gauncar,

8. Shri Bhanudas Narahari Gauncar,

9. Smt. Sundari Chondru Gauncar,
widow of Chondru Segun Gauncar,

10. Smt. Premavati Suba Gauncar,

11. Shri Mableshwar Segun Gauncar,

12. Smt. Suvashini Mableshwar Gauncar,
all r/o Arpora, Bardez, Goa,

13. Smt. Abolem Bagvonta Vaigancar,

14. Smt. Indumati Narahari Gauncar,

15. Smt. Vimal Dattaram Alornekar,
all r/o Arpora, Bardez, Goa,

16. Shri Dattaram Vaman Alornekar,
r/o Arpora,

17. Shri Govind Pondori Gauncar,

18. Smt. Gautami Govind Gauncar,
all majors, r/o Sirigao, Goa. ...Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D.

Bhobe, advocate for the appellants.

Shri R. G. Ramani, advocate for respondent nos. 1, 2, 3 (a),(b),(d),(e) & 18.

CORAM : F. I. REBELLO, J.

DATE : 18th July, 2003.

ORAL JUDGMENT

The respondents are the original plaintiffs and the appellants herein are the original defendants. The suit was filed by the plaintiffs against the appellants herein on the ground of dispossession. That suit came to be decreed by the judgment and order of the trial Court dated 8th July, 1992. Various issues were framed of which issue no.1 was whether the respondents herein were able to prove that they were owners in possession of the suit property and issue no.6 was whether the appellants herein prove that the property is described under no. 6337. Issue no.1 was answered in favour of the respondents herein. The learned court answered issue no.6 against the appellants herein.

2. Aggrieved the appellants herein preferred Regular Civil Appeal No.12 of 1993, which came to be disposed of by Judgment dated 23rd February, 2001. The learned Judge framed two points for consideration of which the first point was whether the suit property is "GORBHATULEM", which corresponds to land registration certificate no.7694 and matriz no.142 and the second point was whether the suit property is not LRC No.7694 but LRC 6337 and that the appellants are in possession of the suit property irrespective

of the auction and the judgment in the Civil Suit of the year 1932? The Appellate Court answered the first issue in favour of the respondents and negatived the second contention as raised by the appellants herein.

It is against that Order that the appellants have preferred this Second Appeal.

3. Learned counsel for the appellants has formulated three points which, according to him would amount or raise substantial questions of law which are taken on record and marked as Exh."X-1" for identification.

4. Arguing further, on behalf of the appellants, it is contended that both the Courts below did not address themselves to the question whether, in fact, the two properties correspond to the same property and that admittedly, the property which was sold was an undivided share and consequently no title could have flowed in favour of the respondents herein. It is pointed out that this issue 3was specifically raised in the written statement. No issue was framed thereto and in these circumstances, it would amount to miscarriage of justice if the matter is not remanded with a direction for framing issues afresh and deciding the said controversy.

5. On the other hand, on behalf of the appellants,

their learned counsel contends that the very issue was an issue in the earlier suit filed by the predecessor-in-title of the respondents against the predecessor-in-title of the appellants and that was answered against the appellants herein. That Judgment which was rendered on 21st September, 1935 in S.A. 21 of 1932, was not challenged, neither was the Court auction held in the year 1900. Apart from that, it is pointed out that there are concurrent findings of fact by both the Courts below that the property is the property belonging to the respondents herein identified under No.7694 and, consequently, no question of law arises. It is the submission of the learned counsel that the Appeal ought to be dismissed.

6. From the records what emerges is that there was a court auction held in the year 1900, wherein the suit property was auctioned and purchased by one Shankar Porob in 1900. On purchase of the said property that property was inscribed under no. 3294 and described under no.7694. On inventory taking place, it was inherited by his son Baburao Shankar Porob who, by deed of sale dated 2nd May, 1931, sold the property to Mukund Devu Gaonkar and two others, who are the predecessors-in-title of the present respondents. Documents on record further show that the said Mukund Gaokar and his wife and others filed a suit against Ladu Purso Gaokar and his wife and others in respect of the property identified under no.7694. In that suit the contention of the present appellants was that the property described under no.6337 is a

distinct and separate property and was purchased by the ancestors in the year 1894, after examining the rival contentions. The learned Judge held that the property described under no.7694 new was inspected and was admitted by the defendants in the suit as third addition of the property "BORODBATULEM" of the property described under no.6337, which was in possession of Rama Vatu Gaonkar. This very property of Rama Vatu Gaonkar was attached and sold with the name "GORBHATULEM". There is a finding that it was only Rama Gaonkar who was in possession and after attachment the property was given in the hands of the Court Receiver from whom it came to the auction purchaser i.e. Shankar Porob. For those reasons and other reasons given therein, the learned trial Court recorded a finding that the suit is decreed and the possession restored to the plaintiffs therein is confirmed, with the exception of a plot of 30 cubits long and 30 cubits broad. It is, therefore,clear that the property described under no.7694 new was, in fact, the third **adicao** of property described under no.6337, which was sold and possession was with the Court Receiver when auctioned. The Judgment of the trial Court in Civil Suit 8 of 1932 was not challenged. The question as to whether possession was with the appellants or the respondents need to be gone into as the Judgment itself is clear that possession was given to the respondents herein, or their predecessors-in-title. These very issues were again in issue before the courts below. The trial Court and the Appellate Court have found that the

appellants wrongly dispossessed the respondents herein. In these circumstances, in my opinion, the contention as now raised by the appellants that the property is not identified or it is not ascertained, is devoid of merit.

In the light of that, there is no merit in this Second Appeal, which is accordingly rejected, with no order as to costs.

F. I. REBELLO, J.

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